



March 30, 1998

The Honorable John McHugh
Chairman
House Subcommittee on the Postal Service
Committee on Government Reform and Oversight
B349C Rayburn House Office Building
Washington, DC 20515

Dear Mr. Chairman:

Thank you for your invitation to present formal comments and recommendations on your proposed revisions to H.R. 22, the Postal Reform Act of 1997. Especially now, as nonprofit mailers brace for proposed 15-18% increases in Standard A rates as a result of R97-1, our thoughts focus on how legislative reform might improve upon the current ratesetting process.

As you know, our comments on the ratesetting provisions of earlier drafts of H.R. 22 have always centered on our very grave reservations about granting the Postal Service greater flexibility in setting postal rates.

We are not surprised that current USPS management is seeking these changes, but we're convinced that such freedoms are neither needed or desirable. And, we're most certain that the USPS has demonstrated that such freedoms are not deserved. The recent decision by the Board of Governors on the current rate case proceeding reveals a disturbing picture of the Postal Service's notion of "fair" rate design and revenue requirements. And other recent developments before the PRC suggest that USPS management and litigation strategists may be attempting some measure of deception in the current proceeding.

These concerns are central to our recommendations. There are some specific areas of concern to preferred rate mailers, and especially to the nonprofit community. We've divided these into four sections:

- I. Overall Rate Increases
- II. Disparate Increases for Individual Rate Categories
- III. General Issues Affecting All Mailers
- IV. General Issues Affecting Nonprofit Mailers

I. OVERALL RATE INCREASES

As we understand it, the bill would limit overall preferred rates to the lesser of the levels permitted by proposed chapter 37 of Title 39 (the new rate escalation provisions), or the levels permitted by the existing standards of 39 U.S.C. § 3626(a)(1) (the Revenue Forgone Reform Act of 1993). We are concerned that neither ceiling would protect preferred rate mailers.

Proposed chapter 37 would establish “baseline rates” (proposed 39 U.S.C. § 3701), then escalate them from time to time in accordance with the new rate escalation provisions (*id.*, §§ 3721-24). Nothing in H.R. 22 appears to require that the “baseline rates” include reduced rates for the preferred subclasses in accordance with existing § 3626(a). Section 3701 requires the Postal Service to file a request for proposed rates “in accordance with section 3622(a).” The existing rate preference provisions appear in 39 U.S.C. § 3626, not 3622. At the very least, section 3701 should be revised to make clear that “baseline rates” for the preferred subclasses must comply with the provisions of existing § 3626 requiring the establishment of reduced rates.

Sections 1002(e)(1)(B) and (2) of H.R. 22 would limit nonprofit rates to the levels established by existing 39 U.S.C. § 3626(a), and would require the Postal Service to maintain and update the attributable and institutional cost data needed to implement that provision. This safeguard would, in all likelihood, be illusory.

The quality of the Postal Service’s attributable cost data almost certainly would deteriorate, for such data would have little regulatory role beyond setting preferred rates for nonprofit mailers and few others. Moreover, nonprofit mailers and other preferred rate mailers would get no help from commercial mailers in analyzing and rebutting the Postal Service’s cost testimony, for the linkage between the Postal Service’s reported attributable costs and the rates paid by commercial mailers would be severed. The Alliance of Nonprofit Mailers and other preferred rate mailer groups would essentially stand alone against the manpower and financial resources of the Postal Service.

Instead of singling out nonprofit organizations and other preferred rate mailers for costly litigation over attributable costs, we suggest that the bill require the Postal Service to maintain nonprofit rates as a fixed percentage of the corresponding regular rates. The percentage probably ought to approximate the percentage that exists now except for the bizarre anomaly surrounding the library rate. As the Subcommittee is aware, current USPS proposals would increase the library rate *above* the most closely corresponding commercial rate.

We urge the Subcommittee to consider the following or similar language in the indexed rate provisions:

“[The indexed rate change] for each rate category subject to section 3626 (a) shall be the same percentage change established for the most closely corresponding regular-rate category pursuant to section _____ of this title.”

We believe that this would go a long way toward resolving the concerns of preferred rate mailers in this section and in the next section on disparate rate increases.

II. DISPARATE INCREASES FOR INDIVIDUAL RATE CATEGORIES.

The proposed legislation would leave nonprofit mailers defenseless against damaging changes within the nonprofit rate structure. Proposed § 3723(d) would establish a general rule requiring that rate increases be applied uniformly within each basket of products. As originally proposed, however, § 3724(d) would have created an exception to this rule: the Postal Service’s “Directors” (formerly, Governors) could adopt non-uniform increases for rate categories and other subsets of subclasses. The only constraint would have been the requirement that the *average* rate increase for the subclass as a whole not exceed the ceiling established by the adjustment factor. *Id.*, § 3724(d)(3)(C).

In the revised bill, Section 3724 apparently would limit rate changes for categories and other subsets of subclasses within a range no greater than two percent above or below the price cap per year. We are concerned that this safeguard may be insufficient. The Postal Service still could impose bigger increases for rate categories that face less competition, and smaller increases for rate categories that face more competition. Several years of compounding could wipe out our hard-earned progress in establishing cost-based rate differentials for presorting, destination entry and discounts.¹

The bill does provide for judicial review. But judicial review is an empty remedy without meaningful substantive standards for reviewing courts to enforce. The Subcommittee should consider provisions to provide that antitrust pricing principles — including the prohibition against vertical price squeezes — apply by analogy in judicial review of Postal Service decisions on setting prices within subclasses. For example, if the Postal Service offers mail delivery bundled with inter-BMC transportation and mail delivery without such transportation, the difference in the price between the bundled and unbundled service should not be less than the Postal Service’s attributable costs of providing the inter-BMC transportation itself.

III. GENERAL ISSUES AFFECTING ALL MAILERS.

Apart from the problems unique to preferred rate mailers, H.R. 22 also has several items of general concern to all mailers:

- *One Way Ratchet.* Proposed 39 U.S.C. §§ 3722(b)(1) and (2)(A) appear to create a one-way ratchet: rates go up when the Consumer Price Index (“CPI”) goes up, but don’t go down when the CPI goes down. Moreover, when the CPI next goes up, the starting point for the next adjustment is the previous year’s rates, not the previous year’s costs. Over time, alternating periods of rising and falling costs could produce rate increases far in excess over the net increase in the CPI. *The adjustment mechanism should be modified to operate in both directions.*

¹Moreover, proposed 39 U.S.C. § 3744(a) would exclude noncompetitive categories of mail from the coverage of the antitrust laws.

- *Positive Adjustment Factors.* The maximum percentage rate adjustment allowable for each basket of noncompetitive products in any year equals the change in the CPI “adjusted by the adjustment factor for such year.” Proposed 39 U.S.C. § 3722(B)(1)(A). In indexing schemes of this sort, the adjustment is generally a proxy for productivity and is subtracted from the CPI or other price index. Only one of the adjustment factors specified in H.R. 22, however, is “productivity” (proposed 39 U.S.C. § 3723(c)(3)). The remaining factors (§§ 3723(c)(1), (2), (4)-(6)) appear to allow the Postal Service and the Commission to depart from the CPI by any amount, in either direction, and on whatever grounds “as the Postal Service and the Commission mutually agree to be appropriate.” This seems to jeopardize the goal of linking rates to an objective and tamper-proof benchmark.
- *Oops! We Goofed And Need More Money!* Proposed 39 U.S.C. § 3723(f) would allow the Postal Service, by certifying that it needs more money (“faces severe financial exigencies”), to get rates higher than permitted by the applicable adjustment factors. There are some that might consider this provision to be at odds with the very purpose of the incentive rate proposal. However, such a scenario would not escape the scrutiny of mailers, who would likely engage in litigation before the Commission.
- *Measurement of Delivery Service.* We are fascinated by a provision that calls upon the Commission to evaluate the “quality of mail service actually provided each class or type of mail service, including the collection, mode of transportation, priority of delivery, and timeliness of delivery....” This would be uncharted waters for the Commission and for the Postal Service. All mailers would warmly welcome any open-aided measurement of the quality of delivery of “Standard Class” mail.

IV. GENERAL ISSUES AFFECTING NONPROFIT MAILERS.

- *Requester Status for Nonprofits.* We appreciate the inclusion of a “requester” subclass status for nonprofit publishers. At present, the rate schedule for Periodical (second-class) regular rate mail provides for a requester subclass, yet has no nonprofit counterpart.

As we have discussed in the past, we offer some minor suggestions that we believe will improve the amendment. We would appreciate the inclusion of this technical correction in the Subcommittee’s proposal.

Suggested section creating a nonprofit requester subclass:

(b) RATES FOR MAIL UNDER SECTION 4358. Section 3626 of title 39, United States Code, is amended by adding at the end the following:

“(n) In the administration of this section, matter that satisfies the circulation standards for requester publications shall not be excluded from being mailed at the rates for mail under former section 4358 solely because such matter is designed primarily for free circulation or for circulation at nominal rates, or fails to meet the requirements of former section 4354(a)(5).”

- *Proposals to Maintain Authorization for Appropriations to USPS.* Also included in the revised H.R. 22 is a continuation of the authorization for the revenue forgone

appropriations. We appreciate that the bill protects the preferred postal rate and continues to honor the phased schedule of nonprofit postal rate increases as envisioned by RFRA, and we agree that free mail for the blind and overseas voting materials and reduced rates for qualifying nonprofit mail should continue to be part of the Postal Service's public service obligations. We also appreciate that the proposal would continue to authorize funds to the Postal Service in payment of those obligations resulting from RFRA and those remaining health care costs of workers under the old Post Office Department.

CONCLUSION

Mr. Chairman, thank you again for allowing us this opportunity to share our point of view. To you, to the Members of the Subcommittee and to your staff, our most sincere compliment goes to the process that you've created to gather all of these ideas, to sift through the differing points of view and to refine proposals. Whether time will allow passage of this entire bill prior to adjournment is one matter. Certainly you have found some resistance to some of the more controversial sections. However, as we have learned by listening to and working with others that have provided testimony to the Subcommittee, a number of the proposals in H.R. 22 are accepted unanimously. We hope you will consider introducing some of those measures in an expedited legislative initiative.

The Alliance of Nonprofit Mailers appreciates the work that has produced the Postal Reform Act and looks forward to working with this Subcommittee and other mailers in the challenging days ahead.

Sincerely,

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President

Alan Kline
Vice President

encl: Membership List, Alliance of Nonprofit Mailers
copy: Honorable Chaka Fattah, Ranking Minority Member
Members of the Subcommittee